person of the complainant who was a fellow mandor and causing his injury which falls within the statutory definition of "grievous hurt". There is not a scrap of evidence that anybody except the appellant made or attempted to make use of a knife at any time. In the event the appellant was overpowered and arrested.

In the circumstances it is very difficult to see how the appellant could possibly have hoped to be acquitted.

As regards the sentence, in our view it is a modest one. Our many years of experience in these Courts tell us that again and again this very sort of situation — the use of this very sort of weapon — ends with a dead body. In our view in all cases in which a knife is used a punishment should be imposed which is sufficiently heavy to emphasize the seriousness of the offence.

One of the grounds of appeal calls for a little less cursory consideration because it arises from a misunderstanding of the provisions of the Code and of two reported cases which may be widespread.

The charge in the present case reads as follows:—

"That you on the 8th day of March, 1962, at about 5.45 a.m. at Sungei Senarut Estate, Batu Anam, Segamat, in the State of Johore, voluntarily caused grievous hurt to one Rengasamy, son of Letchumanan by means of an instrument for cutting, to wit, a knife, and that you thereby committed an offence punishable under section 326 of the Penal Code."

It was argued that that charge was bad because it should have included an allegation that the instrument used was one which used as a weapon of offence was likely to cause death. In support of that our attention was invited to the local case of *Shaik Meera* v. *The Queen* [1] and the Singapore case of *Sultan Mohamed* v. *The Queen* [2].

The relevant portion of section 326 of the Code reads as follows:—

"Whoever ..... voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, ... shall be punished ....."

In our view the meaning of that is crystal clear. There is an offence if the instrument used is one for shooting; there is an offence if the instrument used is one for stabbing; there is an offence if the instrument used is one for cutting; and finally, there is an offence if the instrument used which does not come within either of the first three descriptions, that is for shooting, stabbing or cutting, is one which if used as a weapon of offence is likely to cause death. In other words the words "likely to cause death" qualify the word "instrument" the second time it occurs and not the first time.

The present case is to be distinguished from the two cases relied on by the appellant because in each of them the instruments used were pieces of wood. Pieces of wood are not instruments for shooting, stabbing or cutting and therefore to make out an offence under section 326, or under section 324 in which the relevant words are the same, it had to be alleged and proved that these pieces of wood were instruments which if used as weapons of offence were likely to cause death.

The appeal is dismissed.

Appeal dismissed.

D'CRUZ v. SEAFIELD AMALGAMATED RUBBER CO. LTD.

[O.C.J. (Gill J.) February 11, 1963]

[K.L. — Civil Suit No. 486 of 1961]

Master and Servant — Contract of service — Notice of termination of service — Wrongful dismissal — Claim for damages, commission and leave pay.

The plaintiff was a chief clerk of three rubber estates in 1953 and was paid by all three estates proportionately. In 1956 his services with one of these estates was terminated and he was given 3 months' pay in lieu of notice. Soon afterwards he was appointed conductor in charge of one of the two remaining estates, which two estates were wholly owned and came under the administration of the defendants. On March 3, 1961 the plaintiff received a letter informing him that his services would not be required one month from the date of the letter. The plaintiff's salary and allowances were paid up to April 2, 1961. The plaintiff now claimed that he was wrongfully dismissed and claimed sums of money due to him and damages for wrongful dismissal. The questions for the determination of the Court were whether (a) the plaintiff was entitled to commission from October 1, 1960 to April 4, 1961; (b) he was entitled to 3 weeks' or 2 weeks' leave pay and (c) he was entitled to 3 months' notice of termination of his services and if so, the damages he was entitled to.

Held: (1) the plaintiff was entitled to recover by way of commission on the basis of the commission paid to him for the previous financial year and on the basis that the profits during the current year were not smaller than those in the previous year;

(2) the plaintiff was entitled to 3 weeks' leave pay;

(3) having regard to the facts and all the circumstances of this case the plaintiff was entitled to 3 months' notice.

Cases referred to:—

(1) *Payzu* v. *Hannaford* (1918) 2 K.B. 348.

(2) *Foxall* v. *International Land Credit Co.* (1867) 16 L.T. 637.

(3) *St. L.B. Aldworth* v. *A.H. Frankton* (1915) 1 F.M.S.L.R. 233.

(4) *Fairman* v. *Oakford* (1880) 5 H. & N. 635.

(5) *High Street Provision Store Ltd.* v. *Oliverio* [1930] S.S.L.R. 210.

(6) *MacDowall's case* (1886) 32 Ch. D. at p. 371.

(7) *Mulholland* v. *Bexwell Estates Co. Ltd. and Ors.* (1950) 66 T.L.R. (Pt. 2) 764.

(8) *Addis* v. *Gramophone Company Limited* [1909] A.C. 488.

(9) *S.R. Fox* v. *Ek Liong Hin Ltd.* [1957] M.L.J. 1.

CIVIL SUIT.

R. R. Chelliah for the plaintiff.

H. E. Chan for the defendants.

Cur. Adv. Vult.

Gill J.: The plaintiff's claim in this case is for certain sums of money which he alleges were due to him on the termination on 30th April, 1961 of his services as an employee of the defendants and for damages for his alleged wrongful dismissal from the defendants' employment as the conductor in charge of Teluk Piah Estate, Kuala Selangor.

The material facts of the case are not in dispute. The plaintiff was engaged as chief clerk of Teluk Piah Estate and two other estates also in the Kuala Selangor area, namely, the Lapan Utan Estate and Avondale Estate (now known as Eng Hong Estate) on 23rd May, 1953. The three estates were under the same manager and the plaintiff's salary was paid by all three estates proportionately. The plaintiff's services with Lapan Utan Estate were terminated in 1956 when the estate was sold, and he was given three months' pay in lieu of notice on such termination of his services.

After the plaintiff's employment with Lapan Utan Estate ceased he remained as a clerk to Teluk Piah Estate and was then appointed as conductor in charge of the estate, there being no resident manager on the estate. In January, 1961 the plaintiff received a copy of a notice stating that with effect from 14th January, 1961 the business hitherto carried on by the Teluk Piah Rubber Estates (1914) Ltd. which was wholly owned by the Seafield Amalgamated Rubber Co. Ltd. (the defendants) would be carried on by the Seafield Amalgamated Rubber Co. Ltd. in its own name. The notice also stipulated that the formal change would not result in any change in the employment or conditions of service of any employee. Subsequently the plaintiff received a letter dated 3rd March, 1961 from the visiting manager of the estate informing him that one month from the date of this letter his services would no more be required. The manager then sent a letter dated the 30th March, 1961 enclosing therewith a cheque for $487.17 being the plaintiff's salary and allowances up to 2nd April, 1961. After 2nd April, 1961 the plaintiff was not allowed to work on the estate. He now says that he was wrongfully dismissed because he was not given three months' notice.

Prior to the date of termination of the plaintiff's services he was drawing a salary of $450 a month, a cost of living allowance of $50 a month and a dresser's allowance of $20 a month, making a total of $520 a month. In addition to that he was entitled to a provident fund contribution of 15% on his basic salary of $450 a month, and to a commission for each year ending on 30th September. He was also entitled to three weeks' paid leave for each year, and if such leave was not granted by reason of pressure of work he was entitled to money payment for that period known as leave pay.

The plaintiff alleges that at the time of termination of his services there were due to him a sum of $1,339.71 as commission for the period 1st October, 1959 to 30th September, 1960, a sum of $893.14 being commission for the period 1st October, 1960 to 30th April, 1961 and at least three weeks' leave pay amounting to $440.62. He also claims two months' salary by way of damages for wrongful dismissal on the ground that he should have been given three months' notice of termination of service, and there is a further claim in the sum of $4,700 as damages in respect of what he calls "severance pay" on the ground that if he had been given three months' notice he would have been still in the employment of the defendants when Teluk Piah Estate was sold, in which case he would have become entitled to severance pay at the rate of one month's salary for each completed year of service calculated on the last drawn salary.

The defendants admit that the sums of $1,339.71 and $293.75 are due to the plaintiff as commission and two weeks' leave pay respectively, but deny liability as to the rest of the plaintiff's claim. Therefore, the questions to be determined in this case are: (1) whether the plaintiff was entitled to commission for the period 1st October, 1960 to 30th April, 1961, (2) whether he was entitled to three weeks' or two weeks' leave pay and (3) whether he was entitled to three months' notice of termination of his service and, if so, what damages, if any, he is entitled to.

For their defence on all these three questions the defendants rely on the evidence of Mr. R. G. Delves, a director and vice-chairman of the Malayan Estate Agencies Group Ltd. who are the managing agents of the defendant company. Mr. Delves was at all material times in charge of the agency for Teluk Piah Estate on which the plaintiff was employed. His evidence is that he has been in the rubber agency business in Malaya since the end of May, 1947 and as such he is familiar with the customs relating to and the terms of service of various employees in the rubber planting industry. His evidence undoubtedly is based on his knowledge of local conditions and the regulations made by the Malayan Planting Industries Employers' Association (M.P.I.E.A.), which is technically an employers' trade union, to which many employers do not belong and the regulations of which bind the members only. The defendants also rely on the evidence of Mr. J. A. T. Pereira, the executive vice-president of the M.P.I.E.A., who again undoubtedly is familiar with the employer and employee relationship in the planting industry, but his evidence too turns largely on the regulations made by the M.P.I.E.A.

Taking first the question as to whether the plaintiff is entitled to commission for the period 1st October, 1960 to 30th April, 1961, the evidence of the plaintiff is that commission was part of

his remuneration as an employee of the defendant company. Mr. Delves said in evidence that he could not swear whether the plaintiff was in receipt of commission from 1953 but he admitted that since 1956 at any rate commission was paid to the plaintiff. He also said that the plaintiff was entitled to commission for the year ended 30th September, 1960, by reason of his having served throughout the financial year, but he went on to say that where an employee has served for only part of a year, payment of commission is at the discretion of the employer. Notwithstanding the evidence of Mr. Delves on this point, it has to be observed that commission was part of the plaintiff's remuneration. It was no doubt payable at the end of each financial year but the right to it accrued to the plaintiff from day to day. It would be unjust to deprive an employee of an accrued right if it should become necessary for some reason to terminate his services in the middle of the financial year. An employer may be justified in terminating his employee's services at any time during the financial year, but this does not mean that the employee cannot recover remuneration for the services he has actually rendered; he can sue for and recover a reasonable sum or *quantum meruit* for the services he has rendered, and as index of what these services are worth he is entitled to say what commission his employer had paid him during the previous years. In my judgment a termination of an employee's services cannot and should not prejudice his claim in respect of any accrued right arising out of services rendered prior to such termination. On that principle the plaintiff is entitled to recover from the defendants the sum of $893.14 by way of commission on the basis of the commission paid to him for the previous financial year and on the basis that the profits during the current year were not any smaller than those in the previous year.

Coming next to the question of leave pay, Mr. Delves' evidence is that an employee is entitled to three weeks' leave for each completed year of service, of which two weeks may be accumulated for a maximum period of six years. In this case the plaintiff was entitled to accumulate his leave from 1st December, 1959, so that he had an accumulated leave of only two weeks. Mr. Pereira's evidence on this point is that the position is not the same when the employee wishes to take his leave but it is not granted to him. This, he said, was not covered by any agreement between his association and the union. The plaintiff's evidence is that he did apply for leave but he could not get it because of pressure of work. His evidence on that point was not seriously challenged, but Mr. R. S. Hermon, the manager of Teluk Piah Estate from 27th July, 1960 to 1st May, 1961, gave evidence on behalf of the defendants to the effect that the plaintiff did not apply for annual leave. It may well be that the plaintiff applied for leave before Mr. Hermon took over as manager, but be that as it may, the defendants by their letter dated 19th June, 1961 offered to pay the plaintiff three-quarters of a month's salary provided he signed a receipt stating that he would have no further claim on the estate. It is not clear why this offer was made, but Mr. Delves said it was quite possible that it was in respect of three weeks' leave pay. In the circumstances I would allow the plaintiff's claim for three weeks' leave pay in the sum of $440.62.

I now come to the last question to be decided in these proceedings, namely, the question as to the length of notice for terminating a contract of service. I would preface what I have to say on this question by observing that the basis of the employer and employee relationship in almost all cases is contractual, so that the general principles of the law of contract apply to a contract of service. It is therefore clear that the right of the private employer to dismiss his servant is only limited by the terms of the contract. Thus, where a contract provides for the services of an employee to be terminated on a month's notice, the employer can dismiss the servant by giving him a month's notice without stating any reason for doing so, without having any reason for doing so or indeed for the most disreputable and wicked reasons. It is equally clear that except where the hiring is for a definite period the contract must be terminated by notice. The case of *Payzu* v. *Hannaford* [1] is an authority for the proposition that where there is a contract of hiring of a workman and nothing is said on either side as to any notice to be given to determine the contract, it is an implied term of the contract that it can be terminated only by either party giving a reasonable notice.

Where the parties have not declared their intention as to notice, then the notice will be such as custom or usage prescribes, provided of course the custom or usage was known to the parties at the time when the contract was made. The custom must be general and uniform, certain and reasonable in its terms, of reasonable antiquity and so notorious that persons would contract on the basis of its existence: see *Foxall* v. *International Land Credit Co.* [2]. All these are questions of fact which must be proved by evidence although the Courts will take judicial notice of a custom which is well established in the Courts. Thus, there is a well established and judicially noticed custom in England that a domestic servant can be dismissed at any time by a month's notice or by the payment by the master of a month's wages in lieu of notice, although in this country only 14 days' notice is required as provided by section 57 of the Employment Ordinance, 1956.

In the absence of any declared intention of the parties or custom, a contract of service can only be terminated by a reasonable notice. *Halsbury's* Laws of England (3rd Edition), Vol. 25 at page 490, para. 945, states the position as follows:—

"If no custom or stipulation as to notice exists, and if the contract of service is not one which can be regarded as a yearly hiring, the service is terminable by reasonable

notice. If a servant is taken into employment subject to the drawing-up of a written contract of service which is never in fact drawn up, there is contract of employment for an unspecified period which is terminable by reasonable notice."

Indeed, custom and reasonable notice are closely linked to each other in the sense that what is customary is reasonable and that the law will not recognise an unreasonable custom. Thus, it is for the Court to say what length of notice is reasonable in any given case. Evidence adduced to prove custom which is not sufficiently strong to prove its universal acceptance may be excellent evidence upon which the Court may gauge what is reasonable, but each case must depend upon its own particular facts.

The answer to the question as to what is reasonable notice is stated by *Diamond* in the second edition of his "Law of Master and Servant" at pages 179 and 180 as follows:—

"The notice must be reasonable from the point of view of both parties, but its primary object is to enable the servant to obtain similar employment elsewhere, or the master to obtain a servant. In determining what notice is reasonable, a Court commonly has regard to the following considerations. Firstly, what is the nature of the employment? The more important and responsible are the duties of the employment, and the higher the remuneration, the longer will be the appropriate notice. Secondly, for what period was the servant engaged? If it was merely a temporary or trial engagement, a short notice is indicated. Thirdly, for how long has he served the master? An employee of some years' service is fairly entitled to a longer notice than others. Fourthly, at what periods was his remuneration paid? An engagement at a quarterly salary suggests a longer notice than a service at weekly wages; and so, too, does an engagement at a monthly salary and a commission payable upon quarterly accounts. There is a prevalent misconception that, as a matter of law, a servant employed at weekly wages is entitled to a week's notice, and a monthly servant to a month's notice. What is a reasonable notice is a question of fact."

Batt in his "Law of Master and Servant", 4th Edition at page 58, states as follows:—

"Thus it appears that the higher the position held by the servant and the larger his salary the longer is the notice which will be required to put an end to his contract of service, whilst the humbler servant receives much shorter shrift and the longer the periods between payment of wages (week, month, quarter, etc.), the longer the notice required."

Turning now to decided cases, the earliest case on the question of notice in this country to which learned counsel for the plaintiff referred is the case of *St. L.B. Aldworth* v. *A. H. Frankton* [3]. In that case the defendant/appellant engaged the plaintiff/respondent as manager of his rubber estate in January, 1914 and agreed to pay him a monthly salary and a commission. In July, 1915 the defendant gave the plaintiff a month's notice to terminate the agreement, whereupon the plaintiff sued the defendant for damages. The plaintiff claimed that it was a yearly hiring terminable only by a year's notice. The defendant on the other hand argued that because the salary was payable monthly, therefore engagement must be taken to be a monthly one terminable by a month's notice. Edmonds J.C. the trial Judge held that the reasonable notice which plaintiff was entitled to was three months and that he was entitled to damages in respect of two months' loss of employment. His Lordship said in the course of his judgment as follows:—

"Plaintiff desired an immediate judgment and I was unable to refer to the cases on the subject. In *Fairman* v. *Oakford* [4] Pollock C.B. observed 'that juries in London usually find that clerks are entitled to three months' notice.' I believe a long succession of decisions in the Colony has established the right of Mates and Engineers of the local steamers in receipt of monthly salaries to a notice of three months."

The appeal from this decision was dismissed by the Court of Appeal.

In the Colony case of *High Street Provision Store Ltd.* v. *Oliverio* [5] the defendant had been employed by the plaintiff since October 1926, first in the capacity of a book-keeper at a monthly salary of $150 and from the 25th May, 1927, as secretary to the company at a monthly salary of $175. On the 30th April, 1928, the company gave the defendant a month's notice, terminating his services on the 31st May, 1928. The plaintiff company then sued the defendant for a balance of money due for goods sold. The defendant admitted the claim but said by way of counterclaim that instead of one month's notice which he received he ought to have had three months' notice. He therefore claimed two months' salary in lieu of notice at $175 per month or $350. He also claimed $466.66 as bonus, but this claim was withdrawn so that the only question was the claim for salary in lieu of notice. It was held on the facts that the defendant was entitled to two months' notice as being reasonable. Murison C.J. in the course of his judgment said:

"It is clear from the authorities that in the absence of agreement, or of custom or of special circumstances such as incompetence or disobedience, a servant can only be dismissed upon reasonable notice given. (*Payzu Ltd.* v. *Hannaford, supra*). What is reasonable is a question of fact in each case. The case of *Fairman* v. *Oakford, supra*, is generally quoted as an authority for the proposition that a clerk, indefinitely engaged, is entitled to three months' notice. (See *Chitty* on Contract, 17th Edition, pp. 673 - 4). That was a London case and I am not sure how far it applies to Singapore. I know of no local cases which afford any definite guidance.

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In my opinion the law in the Colony upon this matter is that each case stands on its own facts: that what the judge in each case thinks is reasonable notice is the notice to be given.

In this case I consider two months' notice is reasonable notice."

It will be observed that the English case of *Fairman* v. *Oakford, supra*, was the basis of the decision both in *Aldworth's* case, *supra*, and *Oliverio's* case, *supra*. Textbook writers refer to this case as an authority for the proposition that in England a reasonable notice in the case of clerks is three months. This is the normal period at any rate in the case of superior clerks: as *per* Chitty J. in *MacDowall's* case [6]. In the more recent case of *Mulholland* v. *Bexwell Estates Co. Ltd. and Others* [7] it was held that in the case of the general manager of a big company, who was really very little more than a superior clerk,

having regard to the responsibility that devolved on him under this employment, three months' notice was reasonable.

It has been urged by Mr. Chan on behalf of the defendants that what is reasonable notice in England is not necessarily so in this country. I agree that social conditions in this country are not the same as those in England and I also agree that decided cases in England on the question of notice are not binding upon this Court but in view of the paucity of local decisions the English cases must necessarily be regarded as a very good guide and of great persuasive value. After all, the question as to length of notice is one of universal application and the principles upon which the Courts will decide on reasonable notice must be the same. As I have stated above, in the two above-mentioned local cases an English case was accepted as a suitable guide.

In order to apply the general principles of law which I have stated above I propose now to deal with the evidence in this case as to custom and as to what was in the contemplation of the parties when the plaintiff was engaged as a chief clerk to three estates in 1953. It is common ground that there was no written contract between the parties. It is also common ground that the plaintiff was engaged by word of mouth and that there was no stipulation as to the length of notice required to be given by each party for the termination of the contract. The plaintiff has stated in evidence that when his services with Lapan Utan Estate were terminated in 1956, after he had served that estate for a period of three years, he was given three months' pay in lieu of notice. His contention is that when he was taken on as conductor-in-charge of Teluk Piah Estate he knew that if his services were terminated he would be given at least three months' notice.

As regards custom the evidence of Mr. Delves is that in all the years he has been in the rubber industry he has known that the normal notice for terminating services of an estate conductor is one month. This, he says, is the custom of the industry. He has stated further that perhaps in the case of redundancy or sickness a man with a particularly long service of a minimum of twenty-five years may be given a notice of two or three months, but these factors did not apply to the plaintiff's case. As I have stated above, Mr. Delves bases his opinion on the M.P.I.E.A. regulations, which of course are binding only upon employers. Mr. Pereira also gave evidence that in March or April 1961, customarily, a notice of one month was given on the termination of the services of a conductor. That, he said, was considered to be the normal period of notice which appears to have been accepted by the appropriate union. He has stated, however, that representatives of the union in the course of an informal discussion with him as the executive vice-president of the M.P.I.E.A. raised the question of increasing the length of notice from one month to three months. Indeed, he went on to say that the union submitted a memorandum to the association requesting that length of notice be increased to three months in the case of staff in grade I of the salary scales and also those with more than five years' service, but this request was rejected by the association.

I must say that both Mr. Delves and Mr. Pereira gave their evidence very fairly and made no attempt whatsoever to boost the defendants' contention that the plaintiff was entitled to only a month's notice. But for reasons which I am about to state I find myself unable to accept that this so-called custom as to one month's notice in the case of an estate conductor is universally accepted by the employees or indeed regularly followed by the employers themselves. As regards the present case there is no evidence whatsoever that the plaintiff was aware of this custom at the time of his first employment in 1953. In the second place, he was first employed as a chief clerk of three estates and subsequently as a conductor-in-charge, both of which appointments must be considered as being in the nature of those of a superior clerk and above that of an ordinary conductor. In the third place, he was given three months' notice when his services with the Lapan Utan Estate were terminated. In the fourth place, he was a grade I officer receiving a salary of $450 per month at the time of his dismissal by the defendants, and lastly, he was engaged for an indefinite period and he served the defendants for a total period of almost eight years. Taking all these factors into consideration and applying the principles of law which I have stated above, I am of the opinion that the plaintiff should have been given three months' notice. He is therefore entitled to two months' salary and Provident Fund contribution by way of damages for wrongful dismissal.

I do not consider it necessary to dwell at very great length on the claim for severance pay as part of the damages for wrongful dismissal. In this connection perhaps it would be relevant to mention the case of *Addis* v. *Gramophone Company Limited* [8] which was cited by counsel for the defendants. It was held in that case that where a servant is wrongfully dismissed from his employment the damages for the dismissal cannot include compensation for the manner of the dismissal, for his injured feelings, or for the loss he may sustain from the fact that the dismissal of itself makes it more difficult for him to obtain fresh employment. This decision was followed in the Singapore case of *S. R. Fox* v. *Ek Liong Hin Ltd.* [9]. The basis of the plaintiff's claim for severance pay is that had he been given three months' notice he would have been considered as being in the employment of the estate on the date of its sale and would then

have become entitled to it. However, it is abundantly clear that severance pay is entirely in the discretion of the employer and that no employee is entitled to it as of right. The plaintiff's claim for severance pay is therefore disallowed.

In the result I hold that there was due to the plaintiff on the date of his dismissal a sum of $2,674.47 by way of commission and leave pay and that he is entitled to a sum of $1,175 being two months' salary and Provident Fund contribution as damages for wrongful dismissal. There will therefore be judgment for the plaintiff in the sum of $3,849.47 and taxed costs.

Judgment for the plaintiff.

Solicitors: *R. R. Chelliah Bros.; Shearn, Delamore & Co.*

CHAN BUCK KIA v. NAGA SHIPPING & TRADING CO. LTD.

[O.C.J. (Tan Ah Tah J.) February 15, 1963]

[Singapore — Suit No. 1647 of 1960]

Shipping contract — Uniform time charter — Interpretation of clause in — Ship detained by foreign power — Whether contract frustrated.

By the terms of a uniform time charter the defendant hired a ship from the plaintiff for a period of 3 months from September 4, 1960 at the rate of $7,600 per 30 days. During the second half of September the ship sailed to a port in Indonesia where it was detained by the Indonesian Government for the rest of the chartered period. Clause 26 of the time charter provided: "If for any reason whatsoever the vessel shall be detained at any port by any authority having dominion over that port the Charterers shall continue to pay the charter hire as provided for in this Agreement....." The plaintiff claimed the sum of $15,200 being the amount of hire due and the defendants pleaded frustration.

Held: on the true construction of the contract, Clause 26 was a provision which was intended to have effect in the circumstances which have arisen and full effect must be given to it, and therefore the contract was not frustrated.

Case referred to:—

(1) *Otto Banck* v. *Adam Bromley & Son* (1920), 5 Ll.L.R. 124.

ACTION.

K. S. Chung for the plaintiff.

M. Karthigesu for the defendants.

Cur. Adv. Vult.

Tan Ah Tah J.: In this action the plaintiff's claim is for the sum of $15,200 being the amount of hire alleged to be payable by the defendant company to the plaintiff under a uniform time charter dated the 8th September, 1960 and made between the plaintiff and the defendant company. By the terms of the uniform time charter the defendant company hired the vessel *Sri Seria* for a period of three calendar months from the 4th September, 1960 at the rate of $7,600 per 30 days payable in advance.

On the 13th September, 1960 the plaintiff's agent received from the defendant company the sum of $7,600 being the amount of hire from the 4th September, 1960 to the 3rd October, 1960. During the second half of September, 1960 the *Sri Seria* sailed on its first voyage under the uniform time charter to Tanjong Balai, Indonesia. On its arrival at this port, the vessel was detained by the Indonesian Government authorities and has been under detention ever since. There has been some speculation as to the reason for the detention of the vessel but no evidence which is properly admissible has been given on this point. Indeed, counsel for the defendant company has stated that he is not in a position to go into the reasons for the detention of the vessel.

In the defence and counterclaim filed by the defendant company a number of defences, including one based on frustration of contract, were raised and there was also a counterclaim for the refund of the sum of $7,600 already paid by the defendant company to the plaintiff and for the sum of $15,000 by way of general damages for loss of profit. However, soon after the commencement of the trial, counsel for the defendant company abandoned all the defences except the one based on frustration of contract and also abandoned the claim for damages which was contained in the counterclaim.

The relevant clauses of the uniform time charter are clauses 26, 28 and 31 which read as follows:

26. If for any reason whatsoever the vessel shall be detained at any port by any authority having dominion over that port the Charterers shall continue to pay the charter hire as provided for in this Agreement and will save harmless and keep indemnified the Owners from and against all action costs, charges claims and demands whatsoever arising out or in respect of such detention as aforesaid provided that if such detention shall arise out of the acts, neglect or default of the Owners their servants or agents then the Owners will in like manner indemnify the Charterers, their assigns. Should the vessel be confiscated by any Government by reason of the Charterers, their servants or agents having undertaken in illegal acts or trades, the Charterers shall then indemnify the Owners for the loss of the vessel, with the sum of Malayan Dollars one hundred and eighty thousand only (M$180,000).

28. In the event of any detention seizure or confiscation of the said vessel by the Indonesian Authorities or Government the Charterers shall not be liable for compensation or damages to the Owners and/or his agent provided always that such detention seizure or confiscation had not been brought about or caused by or through the default of the Charterers but if there had been such detention seizure or confiscation by reason of any acts deed or omission on the part of the Charterers then the Charterers shall be liable in damages and compensate the Owner for such detention, seizure or confiscation.

31. The Charterers shall be absolved free of all consequences, fines penalties and/or detention of the vessel arising from such action of the government appertaining to act or acts howsoever caused or committed by the owner, master and/or members of the crew prior to the charter hereof and the owner shall compensate the charterer by refunding to the charterer the charter hire for such unexpired period as may be incurred by the charterers.